80-1143

Supreme Court, U. S.
FILED
DEC 2 1980
MICHAEL RODAK, JR., CLERK

In The

SUPREME COURT OF THE UNITED STATES
October term 1981

No.....

Aristides Matsis, Petitioner,

-against-

Rose Matsis, Respondent.

CERTIORARI FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

PETITION FOR A WRIT OF CERTIORARI

Petitioner pro se
736 West End Avenue
Suite 3a
New York New York 10025

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QUESTION PRESENTED

The question presented in this case is;can the State enforce the collection of debts with imprisonment sanctions, permissably under the Constitution and federal laws?

OPINIONS BELOW

The courts below rendered no opinion on the federal questions raised by this petitioner.(Appendix A,B,C).

REASONS CONFERRING JURISDICTION UPON THIS COURT

The date of the decree sought to be reviewed is November 21,1979 which was entered on that date. A Notice of Appeal was filed on December 17,1979, in the Supreme Court of the State of New York, Appellate Division,Second Department.

The statutory provisions conferring jurisdiction on this court are 28 USC 1257(3) which states;.. decrees rendered by the highest court of a state in which a decision could be had,may be reviewed by the Supreme Court as follows; By writ of certiorari...where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution,...laws of the United States,...where any...right,privilege or immunity is specially...claimed under the Constitution,...statutes....of the United States.

The following cases decided by this Court,similar to the instant case are believed by the petitioner to sustain the Courts jurisdiction.The power of the Supreme Court to review state court decisions was affirmed in Martin v.Hunters lessee,14 U.S.(1 Wheat.)304,and to review the constitutionality of state statutes was established in Fletcher v.Peck,10 U.S.(6 Cranch).

The statute the proceeding below was brought on is Family Court Act 454(a) which states: If a respondent is brought before the court for failure to obey any lawful order issued under this article and if,after hearing,the court is satis-

fied by competent proof that the respondent has failed to obey any such order,the court may(a) commit the respondent to jail for a term not to exceed six months,if the failure was willful. For purposes of this subdivision,failure to pay support as ordered,shall constitute prima facie evidence of a willful violation.See McKinneys Consolidated Laws of New York,volume 29a,part 1, page 361,1975.

The nature of the proceeding below was as follows, This petitioner was directed pursuant to an order of the court to make support payments in installments and pay a sum toward his ex wifes counsel fees.Upon falling behind in said payments,and this respondents motion,petitioner was incarcerated for the default,(Appendix A).

SUMMARY OF THE ARGUMENT

The state policy of imprisonment sanctions to enfoece the collection of debts constitutes an impermissable revival of peonage,prohibited under the 13th.Amendment and in violation of federal laws,42 USC 1994,18 USC 1581,18 USC 1584 which prohibit the state from coercing an individual into giving his personal service for the benefit of another,such compulsion constitutes involuntary servitude.Congress has put it beyond debate that no indebtedness warrants a suspension of the right to be free from compulsory service,nor can the state make sanctions available for holding persons to labor in the discharge of a debt.The state by labeling a default on a debt,contempt of court in order to legitimize their impermissable sanctions,acts unlawfully.42 USC 1994 specifically prohibits the holding of any person to labor in the liquidation of a debt or otherwise.The 13th.Amendment permits the state to impose involuntary servitude only for a crime and the state cannot legitimately make a default on a debt any compotent of a crime,Pollack v.Williams,322 U.S. 4,18.The immunity from being pressed into involuntary servitude to discharge a debt or coerce the payment by(guaranteed by the 13th.Amendment)

this petitioner as punishment.

Petitioner raised the federal questions sought to be reviewed in the following manner in the courts below; On November 16,1979 in a motion to dismiss,page 8,claiming that the underlying support orders violated the 14th amendment in that they denied him the equal protection of the law and all the rights,immunities and privileges permitted under the rest of the Constitution,which includes the immunity from involuntary servitude guaranteed by the 13th.Amendment.The Family Court on November 21,1979, rejected this defense and incarcerated the petitioner. The trial judge under Article VI Section 2 of the Constitution must uphold the Constitution and laws of the United States,anything in the constitution and laws of any state to the contrary notwithstanding.The trial judges imprisonment of petitioner for debt is prohibited by the 13th.Amendment and Peonage Statutes of the United States.

On February 15,1980,in a brief appealing the incarceration of petitioner the federal claims were again raised in detail. The question involved there is the same raised here.(p.1)Can the state enforce the payment of debts with imprisonment sanctions constitutionaly?.Appellants defense in the appellate court was that the statute authorizing imprisonment sanctions for non payment of a debt were constitutionaly impermissable under the 13th.and 14th.Amendments.

The state policy of imprisonment sanctions to enforce the collection of debts constitutes an impermissable revival of peonage prohibited under the 13th.Amendment and violates sections of federal laws,42 USC 1994,18 USC 1581,18 USC 1584.(p.11)....The words involuntary servitude have a larger meaning than slavery....the plain intention was to abolish slavery of whatever

name or form and all its badges and incidents, by prohibiting that control by which the personal service of one man is ...coerced for anothers benefit which is the essence of involuntary servitude. Bailey v. Alabama, 219 U.S. 219, 240-241. (p.12)

Whatever of social value there may be, and of course it is great, in enforceing contracts and collection of debts, Congress has put it beyond debate that no indebtedness warrants a suspension of the right to be free from compulsory service. This congressional policy means that no state can make the quitting of work any component of a crime, or make criminal sanctions available for holding unwilling persons to labor. The federal statutory test is a practical inquiry into the utilization of an act as well as its mere form and terms. Pollack v. Williams, 322 U.S. 4, 18, (p.12)

The state in order to get around the commands of the 13th. Amendment and dicta of the Supreme Court, by the use of a sham, labels non payment of a debt contempt of court and by this subterfuge acts in violation of the constitution, Supreme Court and federal law. (p.12).

Congress pursuant to section 2 of the 13th. Amendment enacted several laws to enforce the prohibition against involuntary servitude. Among those laws is 42 USC 1994, which states, "The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited ...in the liquidation of any debt or otherwise... (p.13)

The 13th. Amendment and federal laws made in pursuance thereof are immunities guaranteed

to appellant against his being pressed into involuntary servitude by his wife and the states enforcement of that condition(peonage) under the color of law.This dicta would also apply to the state in compelling a party to work out a debt to his ex wife,and even a contractual debt. Taylor v.Georgia,315 U.S.25.

Petitioner in his reply to the brief of the Attorney General stated: The state may impose involuntary servitude as punishment for a crime (and for no other reason)13th.Amendment,section 1.(p.3).

What influence,force or threats to compel a person to render service to another in liquidation of obligation,amounts to coercion such as,if effective,will render service involuntary and create condition of peonage.Peonage Cases,D.C.Ala. 1903,123 F.671.(p.3)

The state interest is not furthered but instead impaired of their policy of imprisonment sanctions for debt.

The state does have a valid interest in promoting the payment of debts and several means to that end.A judgement creditor can garnishee debtors salary and income,attach or sequestor his real property,auction off property,...all of which provide a satisfactory remedy for a judgement creditor without resorting to the harsh remedy of depriving a debtor of his liberty by jailing him.(p.2).

A debtor cannot discharge his obligation in prison nor does the state realize a gain by his incarceration since it costs the public upkeep of the prisoner for which it is never reimbursed. Appellant was in imminent danger of losing his job,home and property while incarcerated,had that happened he surely would have been on the public dole along with his family. It has been argued that the purpose of imprisonment sanct-

ions for default in payment of support are to coerce debtors into satisfying their obligation, the scheme has the opposite effect intended. (p.3,10, appellants brief). Of all the statements made in attorney generals brief ....the most ludricous is that imprisonment sanctions work to motivate compliance with support orders. The dismal record of compliance....speaks for itself, only 25% of child support is actually received. Child Support, Bureau of Census, series P-23, #84, p.3. (p.8).

The state policy is one of naivete,...the state seeks to obtain blood from a stone. In appellants case issuing an order of support requiring 93% of his income to satisfy, based on his fictional ability to earn the means required as determined by the trial judge. Few if any of us ever live up to our abilities, through no fault of our own, by the vagaries of life each and every one of us are limited, can the state (legitimately) jail non achievers? (p.8)

The questions raised herein are substantial in that they go beyond the parties named, thousands of males are incarcerated under the subject statutes and hundreds of thousands more flee the jurisdiction to avoid incarceration....rather than risk jail they elect abandonment to the detriment of the taxpayer who must shoulder the burden in welfare costs. The high rate of non compliance with support debt proves that incarceration does not work to further any state interest involved. (p.10)

The states classification of judgement debtors in matrimonial proceedings, apart and differently from all other judgement debtors, subjecting the former to imprisonment sanctions while exempting the latter for the same conduct is impermissable under the equal protection clause (p.6 appellants brief)

Civil Practice Laws and Rules 5104 provides that any judgement or order,interlocutory or final,not enforceable under article 52 or pursuant to 5102 is enforceable by contempt.The categories thereby excluded are the money judgement.New York Practice,Seigal,1978,p.642 at 481.(p.5)

Except in a case where it is otherwise specially prescribed by law,a person shall not be arrested or imprisoned for disobedience to a judgement or order requiring the payment of money due upon a contract,express or implied. Civil Rights Law 21(p.5).The public policy of this section is to abolish imprisonment for debt.Kessler v.Levy,1895,23 N.Y.S.260,affmd. 42 N.E.723.

The incarceration of appellant for non payment of a debt would not have occured if the debt was a non matrimonial one,a violation of appellants constitutional rights to equal protection under the law under the 14th.Amendment. (p.6)

Poor persons are discriminated against by the subject statutes in that they are without property to attach,or garnishee to satisfy their debt,the state under the statute mandates execution on the debtors body.The rich debtor is exempt from body execution since his property (wealth) saves him from such oppressive state action.Sanctions or the exemption therefrom based on wealth or the lack thereof violate the equal protection clause of the 14th.Amendment and prohibited state action.Tate v.Short, 401 U.S.395,Williams v.Illinois,399 U.S.235. (p.6)

Appellant reserves his right to have federal questions raised herein,reviewed by the United States Supreme Court.(p.8,appellants reply brief to appellee).

In conclusion the incarceration of the petitioner for non payment of a debt in the court below violated petitioners rights and immunities under the constitution and federal law and the subject statute permitting the same is repugnant to the Constitution and laws of the United States,and are of a nature bringing the case within the statutory provision believed to confer jurisdiction on this Court.

QUESTIONS PRESENTED ARE SUBSTANTIAL

If this Court grants review and ultimately strikes down the portion of the statute that permits imprisonment for debt,the state interest would not be impaired one iota since ample alternative and effective means already exsist for the collection of support,such as garnishee,attachment and sequestration of property. Rather the states interest would be enhanced in support collection since the element of coercion created by the imprisonment sanction would be removed and the need to flee the jurisdiction and obligations of support would not exsist. Judgement debtors would remain within the jurisdiction in the discharge of their debts to the best of their ability.The dismal rate of support collection can only improve from the 25% rate,the class affected by improved support collection approximates 27% of the population,of children 1 to 18 years of age(Statistical Abstract of the U.S.1979,100th.edition table # 80) 64,349,000 were born in this nation since 1960 a substantial class affected by the rate of support.Any improvement in their status can only come from this Court.

The class of fathers owing support is also substantial and must number in the millions, and the elimination by this Court of the oppressive physcological threat of incarceration due to a default in the payment of support can only add to the enjoyment of life guaranteed

by the 14th.Amendment.

The pervasive nature and scope of the issues and statutes,together with the national importance of guidance from this Court on what constitutes a workable,permissable statutory scheme that balances the commands of the Constitution with the,rights of citizens and the state interest,requires immediate resolution by this Court imperative.

Constitutional imperatives of the equal protection clause must have priority over the comfortable convienience of the status quo. Williams v.Illinois,399 U.S.235.

If this Court denies review the status quo will be maintained along with the attendant problems society as a whole must pay for,uncollected support must be made up by public programs which are partly funded by the federal government with taxes collected from the rest of the states which indirectly make New York problems the burden of the nation,which is unfair to the rest of the country since they did not play any part in the mismanagement of the state policy concerning the collection of support debt.

Since support is an ongoing and long term obligation the questions presented are likely to recur not only as to the parties here but to the citizens of the state that also have the same obligation,they also have an interest in the outcome of the case.The questions raised are substantial,warranting a decision by this Court.Super Tire Engineering v.McCorkle,416 U.S.115.The courts below by not resolving the issues raised make decision by this Court most urgent.

Given the fact that all the federal questions were properly raised below and that the questions are substantial,were never decided by this

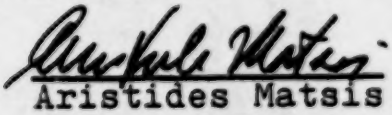
Court before,this squarley presented opportunity to rule on the constitutional and federal questions is a rare and compelling challenge in the area of law and the enforcement thereof in a permissable manner by the states.

CONCLUSIONS

The questions presented in this petition are substantial,novel,recurring and of great importance to the public.Plenary consideration by this Court,with briefs and oral argument on the merits are necessary for their resolution.

Respectfully
submitted;

Petitioner pro se



Aristides Matsis
736 West End Ave
New York N.Y.10025
212 666-0289

At a term of the Family Court of the State of New York held in and for the County of Rockland at New City, New York, on Nov. 21, 1979.

PRESENT:
Hon. Alfred J. Weiner, Judge

In the Matter of the Proceeding for support under Article 4 of the Family Court Act.

Docket Nos.
R-1-78
F-376-76

Rose Matsis, Petitioner,

-against-

Aristides Matsis, Respondent.

The petition of Rose Matsis, sworn to on Oct. 23, 1979, having been filed in this Court alleging that the above named respondent has failed to obey the Order of Support made herein, dated April 18, 1979; and counsel fee orders and
Said respondent having appeared before this court to answer said petition and to show cause why he should be dealt with according to law, and having denied the allegations of the petition; and
Said matter having duly come on to be heard before this court and the court having found that the respondent willfully failed to obey the said order of support of this court in that arrears owed to petitioner total $8,558.00 and arrears owed to petitioners attorney total $4,744.78.
it is therefore,
ORDERED that the above named respondent be and hereby is committed to Rockland County Jail for a term of 45 days from the beginning of said confinement unless sooner discharged according to law (or until said respondent shall have furnished the security required by the aforesaid Order of Support).
NOW THEREFORE WE COMMAND YOU, any Peace Officer,

or the Sheriff of the County of Rockland,or the Sheriff of any County wherein said respondent may be found that you take the body of said respondent and safely keep him in close custody in the jail of the above named County for a period of 45 days.

IN WITNESS WHEREOF,I Hon Alfred J.Weiner a Judge of the Family Court of the State of New York,hereunto set my hand,suscribe my name and cause the Seal of the Court to be hereunto affixed.

_____

J.F.C.
Alfred J.Weiner

At a Term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, held in Kings County on May 27, 1980.

Hon. Guy J. Mangano, Justice Presiding,
Hon. Frank A. Gulotta,
Hon. John P. Cohalan, Jr., Associate Justices
Hon. Charles Margett.

In the Matter of Rose Matsis,
Respondent,
v.
Aristides Matsis,
Appellant.

Order on Appeal from Order

In the above entitled cause, the above named Aristides Matsis, respondent in the Court below, having appealed to this Court from an Order of the Family Court, Rockland County, dated November 21, 1979; and the said appeal having been submitted by Aristides Matsis, the appellant pro se, submitted by David M. Klein, Esq., of counsel for the respondent and submitted by Robert J. Schack, Esq., of counsel for Robert Abrams, Attorney General, Intervenor pro se, due deliberation having been had thereon; and upon this courts decision slip heretofore filed and made a part hereof, it is

ORDERED that the Order appealed from is hereby unanimously affirmed, with costs to respondent.

Enter:

IRVING N. SELKIN
Clerk of the Appellate Division

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, of Appeals Hall in the City of Albany on the fourth day of September A.D.1980.

Present,Hon.Lawrence H.Cooke,Chief Judge,Presiding

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2 Mo.No.804
In the Matter of
Rose Matsis, Respondent,

vs.

Aristides Matsis, Appellant.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been had thereupon it is

ORDERED,that the said motion be and the same hereby is dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution(Cohen and Karger,Powers of the New York Court of Appeals,43).

Joseph W.Bellacosa
Clerk of the Court

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

Rose Matsis, Petitioner,

-against-

Aristides Matsis, Respondent.

Docket Nos.
R-1-78
F-376-76

NOTICE OF APPEAL

Please take notice that the respondent in the above titled action hereby appeals to the Appellate Division, Second Department from an Order of this Court committing him to jail, entered on November 21, 1979, and from every part thereof.

Dated December 17, 1979
New York New York

By. Respondent pro se
2860 Broadway
New York N.Y.